

|                    |   |                         |
|--------------------|---|-------------------------|
| ERNEST A. SWINSON, | ) |                         |
|                    | ) |                         |
| Petitioner,        | ) |                         |
|                    | ) |                         |
| vs.                | ) | Case No. 4:05CV1918 CDP |
|                    | ) |                         |
| CHUCK DWYER,       | ) |                         |
|                    | ) |                         |
| Respondent.        | ) |                         |

This matter is before the Court on the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by petitioner Ernest A. Swinson. The Court referred this matter to United States Magistrate Judge Audrey G. Fleissig for a report and recommendation on all dispositive matters pursuant to 28 U.S.C. § 636(b). On February 9, 2009, Judge Fleissig filed her recommendation that petitioner's habeas petition should be denied. Petitioner did not object to the Report and Recommendation, and his time for doing so has now expired.

After careful consideration, I will adopt and sustain Judge Fleissig's Report and Recommendation in its entirety. I have also considered whether to issue a certificate of appealability. To grant a certificate of appealability, the Court must find a substantial showing of the denial of a federal constitutional right. *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir. 1997). A substantial showing is

a showing that issues are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings. *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997) (citing *Flieger v. Delo*, 16 F.3d 878, 882-83 (8th Cir. 1994)). Because petitioner has not made such a showing, I will not issue a certificate of appealability.


Accordingly,

**IT IS HEREBY ORDERED** that the Report and Recommendation filed on February 9, 2009 [#10] is adopted and sustained in its entirety.

**IT IS FURTHER ORDERED** that Petitioner Ernest A. Swinson's Petition for Writ of Habeas Corpus [#1] is denied.

**IT IS FURTHER ORDERED** that the Court will not issue a certificate of appealability.

A separate judgment in accordance with this Memorandum and Order is entered this same date.

  
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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 3rd day of March, 2009.